

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES ex rel.)
HEATHCOTE HOLDINGS CORP., INC.)
)
Plaintiff,)
) Civil Action No. 10-cv-1471
v.)
) Judge David H. Coar
LEAPFROG ENTERPRISES, INC.)
)
Defendant.)

REPORT OF PARTIES' PLANNING CONFERENCE

Pursuant to this Court's Order, Matthew S. Miller, counsel for Heathcote Holdings Corp., Inc., and Michael P. Bregenzer, counsel for Leapfrog Enterprises, Inc., conferred, pursuant to Rule 26(f) on numerous occasions, including but not limited to March 16, 2010, March 19, 2010, March 22, 2010, March 24, 2010, April 7, 2010, April 8, 2010, April 19, 2010, April 22, 2010, and May 3, 2010, to discuss:

- (1) the nature and basis of their claims and defenses;
- (2) the possibilities for a prompt settlement or resolution of this case;
- (3) to make or arrange for the disclosures required under Rule 26(a)(1); and
- (4) to develop a discovery plan.

To that end, the parties propose the following:

- A. The issues in this case may be simplified by staying this case as requested by the parties' Joint Agreed Motion to Stay. Docket No. 15.
- B. The following modifications to the discovery requirements of the Federal Rules of Civil Procedure or Local Rules should be made in order to expedite discovery:

1. The deadlines provided for under the Federal Rules of Civil Procedure and Local Rules should be stayed.

C. What discovery will be needed will be affected the Federal Circuit's upcoming decisions in *Pequignot v. Solo Cup*, Appeal No. 2009-1547, and *Stauffer v. Brooks Brothers*, Appeal No. 2009-1428, and thus, the parties request that they be granted an extension of time to address these issues until after the requested stay is lifted.

D. Discovery should be conducted in phases to the extent that all discovery should be stayed as requested in the Joint Agreed Motion to Stay.

E. Discovery is not likely to be contentious and management of discovery need not be referred to the Magistrate Judge.

F. The parties do not consent to this matter being referred to the Magistrate Judge for final disposition at this point.

G. The parties have discussed the possibility of alternative dispute resolution and concluded that until the Federal Circuit's upcoming decisions in *Pequignot v. Solo Cup*, Appeal No. 2009-1547, and *Stauffer v. Brooks Brothers*, Appeal No. 2009-1428, alternative dispute resolution will not be productive.

H. The parties have discussed a prompt settlement or other resolution of this matter, and believe that until the Federal Circuit's upcoming decisions in *Pequignot v. Solo Cup*, Appeal No. 2009-1547, and *Stauffer v. Brooks Brothers*, Appeal No. 2009-1428, the chances of settlement are unlikely.

I. The Court should consider staying this case as a method of resolving this case as quickly and as efficiently as possible. To the extent the Court denies the request for a stay or

prefers that the parties submit a proposed discovery schedule even in the event of a stay, the parties request seven (7) days to submit their proposed schedule for the case.

Respectfully submitted:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 10, 2010, a copy of the foregoing was served via electronic mail, and via the Court's electronic filing system, on the following attorneys of record:

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/s/ Michael P. Bregenzer